

(1) authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (b); or

(2) modify or derogate from a right or remedy otherwise available to the employee.

(f) **FOUR-YEAR SUSPENSION OF EFFECTIVENESS WHILE PILOT PROGRAM IS IN EFFECT.**—While section 4712<sup>1</sup> of this title is in effect, this section shall not be in effect.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3796; Pub. L. 112–239, div. A, title VIII, § 828(c), Jan. 2, 2013, 126 Stat. 1841.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4705(a) .....	41:265(e).	June 30, 1949, ch. 288, title III, § 315, as added Pub. L. 103–355, title VI, § 6006, Oct. 13, 1994, 108 Stat. 3365; Pub. L. 104–106, title XLIII, § 4321(e)(8), Feb. 10, 1996, 110 Stat. 675.
4705(b) .....	41:265(a).	
4705(c) .....	41:265(b).	
4705(d) .....	41:265(c).	
4705(e) .....	41:265(d).	

In subsection (d)(2), the word “contractor” is substituted for “person” for clarity and for consistency with subsection (d)(1).

#### Editorial Notes

##### REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (a)(3), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

Section 4712 of this title, referred to in subsec. (f), formerly referred to a pilot program in the section catchline and contained a subsec. (i) which provided that section 4712 would be in effect for a specified four-year period. The section catchline was amended and subsec. (i) was struck out by Pub. L. 114–261, § 1(a)(3)(A), Dec. 14, 2016, 130 Stat. 1362.

##### AMENDMENTS

2013—Subsec. (f). Pub. L. 112–239 added subsec. (f).

#### § 4706. Examination of facilities and records of contractor

(a) **DEFINITION.**—In this section, the term “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether the items are in written form, in the form of computer data, or in any other form.

(b) **AGENCY AUTHORITY.**—

(1) **INSPECTION OF PLANT AND AUDIT OF RECORDS.**—The head of an executive agency, acting through an authorized representative, may inspect the plant and audit the records of—

(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of those contracts, the executive agency makes under this division; and

(B) a subcontractor performing a cost-reimbursement, incentive, time-and-materials,

labor-hour, or price-redeterminable subcontract, or any combination of those subcontracts, under a contract referred to in subparagraph (A).

(2) **EXAMINATION OF RECORDS.**—The head of an executive agency, acting through an authorized representative, may, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to chapter 35 of this title with respect to a contract or subcontract, examine all records of the contractor or subcontractor related to—

(A) the proposal for the contract or subcontract;

(B) the discussions conducted on the proposal;

(C) pricing of the contract or subcontract; or

(D) performance of the contract or subcontract.

(c) **SUBPOENA POWER.**—

(1) **AUTHORITY TO REQUIRE THE PRODUCTION OF RECORDS.**—The Inspector General of an executive agency appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.) or, on request of the head of an executive agency, the Director of the Defense Contract Audit Agency (or any successor agency) of the Department of Defense or the Inspector General of the General Services Administration may require by subpoena the production of records of a contractor, access to which is provided for that executive agency by subsection (b).

(2) **ENFORCEMENT OF SUBPOENA.**—A subpoena under paragraph (1), in the case of contumacy or refusal to obey, is enforceable by order of an appropriate United States district court.

(3) **AUTHORITY NOT DELEGABLE.**—The authority provided by paragraph (1) may not be delegated.

(4) **REPORT.**—In the year following a year in which authority provided in paragraph (1) is exercised for an executive agency, the head of the executive agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the exercise of the authority during the preceding year and the reasons why the authority was exercised in any instance.

(d) **AUTHORITY OF COMPTROLLER GENERAL.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and representatives of the Comptroller General may examine records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract and to interview any current employee regarding the transactions.

(2) **EXCEPTION FOR FOREIGN CONTRACTOR OR SUBCONTRACTOR.**—Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the executive agency concerned determines, with the

<sup>1</sup> See References in Text note below.

concurrence of the Comptroller General or the designee of the Comptroller General, that applying paragraph (1) to the contract or subcontract would not be in the public interest. The concurrence of the Comptroller General or the designee is not required when—

(A) the contractor or subcontractor is—

- (i) the government of a foreign country or an agency of that government; or
- (ii) precluded by the laws of the country involved from making its records available for examination; and

(B) the executive agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

(3) **ADDITIONAL RECORDS NOT REQUIRED.**—Paragraph (1) does not require a contractor or subcontractor to create or maintain a record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another law.

(e) **LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.**—An executive agency may not perform an audit of indirect costs under a contract, subcontract, or modification before or after entering into the contract, subcontract, or modification when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by another department or agency of the Federal Government within one year preceding the date of the contracting officer's termination.

(f) **EXPIRATION OF AUTHORITY.**—The authority of an executive agency under subsection (b) and the authority of the Comptroller General under subsection (d) shall expire 3 years after final payment under the contract or subcontract.

(g) **INAPPLICABILITY TO CERTAIN CONTRACTS.**—This section does not apply to the following contracts:

- (1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.
- (2) A contract or subcontract that is not greater than the simplified acquisition threshold.

(h) **ELECTRONIC FORM ALLOWED.**—This section does not preclude a contractor from duplicating or storing original records in electronic form.

(i) **ORIGINAL RECORDS NOT REQUIRED.**—An executive agency shall not require a contractor or subcontractor to provide original records in an audit carried out pursuant to this section if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

- (1) **PRESERVATION PROCEDURES ESTABLISHED.**—The contractor or subcontractor has established procedures to ensure that the imaging process preserves the integrity, reliability, and security of the original records.
- (2) **INDEXING SYSTEM MAINTAINED.**—The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) **ORIGINAL RECORDS RETAINED.**—The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3797.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
4706(a) .....	41:254d(i).	June 30, 1949, ch. 288, title III, § 304C(a)(1), (b), (g)–(i), as added Pub. L. 103–355, title II, § 2251(a), Oct. 13, 1994, 108 Stat. 3318, 3320.
4706(b)(1) ....	41:254d(a)(1).	June 30, 1949, ch. 288, title III, § 304C(a)(2), as added Pub. L. 103–355, title II, § 2251(a), Oct. 13, 1994, 108 Stat. 3318; Pub. L. 104–106, title XLIII, § 4321(e)(5), Feb. 10, 1996, 110 Stat. 675.
4706(b)(2) ....	41:254d(a)(2).	
4706(c) .....	41:254d(b).	June 30, 1949, ch. 288, title III, § 304C(c), as added Pub. L. 103–355, title II, § 2251(a), Oct. 13, 1994, 108 Stat. 3319; Pub. L. 110–417, title VIII, § 871(a), Oct. 14, 2008, 122 Stat. 4555.
4706(d) .....	41:254d(c).	
4706(e) .....	41:254d(d).	June 30, 1949, ch. 288, title III, § 304C(d), as added Pub. L. 103–355, title II, § 2251(a), Oct. 13, 1994, 108 Stat. 3319; Pub. L. 104–201, title VIII, § 808(b), Sept. 23, 1996, 110 Stat. 2607.
4706(f) .....	41:254d(e).	June 30, 1949, ch. 288, title III, § 304C(f), as added and amended Pub. L. 103–355, title II, § 2251(a), title IV, § 4103(d), Oct. 13, 1994, 108 Stat. 3320, 3341.
4706(g) .....	41:254d(f).	
4706(h) .....	41:254d(g).	
4706(i) .....	41:254d(h).	

In subsection (c)(4), the words “Committee on Oversight and Government Reform” are substituted for “Committee on Government Operations” on authority of section 1(a)(6) of Public Law 104–14 (2 U.S.C. note prec. 21), Rule X(1)(h) of the Rules of the House of Representatives, adopted by House Resolution No. 5 (106th Congress, January 6, 1999), and Rule X(1)(m) of the Rules of the House of Representatives, adopted by House Resolution No. 6 (110th Congress, January 5, 2007). The words “Committee on Homeland Security and Governmental Affairs” are substituted for “Committee on Governmental Affairs” on authority of Senate Resolution No. 445 (108th Congress, October 9, 2004).

#### Editorial Notes

##### REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsection (c)(1), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

#### § 4707. Remission of liquidated damages

When a contract made on behalf of the Federal Government by the head of a Federal agency, or by an authorized officer of the agency, includes a provision for liquidated damages for delay, the Secretary of the Treasury on recommendation